



City of Seattle

Gregory J. Nickels, Mayor

Office of Sustainability & Environment

Steve Nicholas, Director

July 19, 2005

Mike Gallagher, PBT Coordinator
Dept. of Ecology
PO Box 47600
Olympia, WA 98504

Dear Mr. Gallagher,

Thank you for the opportunity to comment on the draft PBT Rule, WAC 173-333. The City of Seattle is pleased to see the Department of Ecology taking significant and substantive steps to address PBTs in our state. PBT reduction has long been a priority of the City; however, our individual actions are limited in their impact. Statewide action is necessary to address this issue.

Overall, we agree with the approach of prioritizing and developing action plans to reduce and eliminate the uses of PBTs. We offer the following comments on the draft rule.

WAC 173-333-130 Exemptions to the PBT list

We strongly disagree with this section providing an exemption to registered pesticides and regulated fertilizers. Because a product is registered or regulated as noted does not mean it does not have the characteristics that pose potential risks to human health and the environment that this rule is intended to address.

These regulatory frameworks do not include the evaluation and actions detailed in this rule. Pesticides and fertilizers should be evaluated based on the criteria established in 173-333-320 in order to determine their priority for developing action plans to reduce and eliminate releases over time.

WAC 173-333-310 What chemicals or chemical groups are included in the PBT list?

The PBT List should distinguish between chemicals currently manufactured in, sold in, imported to, or exported from Washington versus those that have been banned.

Section (3) Categories: The categories described do not appear to be part of the prioritization process and we do not see them referred to anywhere else in the rule. It is unclear what the purpose of this categorization process is.

a. Category 1 and b. Category 2: The phrase "present in Washington" is vague. Is this intended to mean present in the environment?

c. Category 3: The feasibility of measures for reducing or phasing out uses is a criteria for Category 3, however, the process for determining "feasibility" is not defined. This category also includes a criterion for "not present in Washington's environment." Is this suggesting that a chemical present at any level detected in the environment would place the chemical in category 1? Also, even if a chemical is not currently present in Washington's environment does not mean that it might not be found if adequate controls are not placed on that chemical now. In other words, we believe the rule should advocate a preventive approach.

WAC 173-333-320 What criteria will Ecology use to identify and add chemicals or chemical groups to the PBT list?

c. Toxicity. "Aquatic life" should be added to read, "The chemical or chemical group has the potential to be toxic to humans or plants, aquatic life, and wildlife..."

The criteria "known to **cause**" or "anticipated to **cause**" is a very high standard. We suggest identifying the lists under other regulatory authorities or other sources which will be used to establish these effects.

WAC 173-333-330 What criteria will Ecology use to remove a PBT from the PBT List?

As in the criteria for placement in Category 3, if all uses or releases of a chemical or chemical group become prohibited under other state or federal laws or regulations, the chemical should be removed from the PBT List.

WAC 173-333-410 What evaluation factors and processes will Ecology use to select PBTs for chemical action plan preparation?

There seem to be too many steps in the process -

- Evaluation to get on the PBT List
- Evaluation of PBT list to assign to categories
- Evaluation of the PBT list to determine candidates for CAP development
- Evaluation of candidates to select chemicals for CAP preparation

It would seem that the evaluation to define candidate chemicals should result in a prioritization of chemicals for CAP preparation without requiring an additional step of creating a "candidate" list. We would advocate a two step process: development of PBT List and then a prioritization of the order in which the CAP's are developed for the PBTs.

(2) The listed criteria do not include an octanol water partition coefficient factor when a bioaccumulation factor is not available. It would seem that this should be added to be consistent with the criteria for placement on the PBT List (Section 320).

WAC 173-333-420 What are the contents of a CAP?

Impacts on waste disposal and recycling systems should be evaluated.

WAC 173-333-430 What process will Ecology use to develop CAPs?

(6) Public comment and review.

Advisory committee input should be made available to the public in written form.

Thank you for the opportunity to comment. We applaud Ecology for taking these steps to reduce the risk of PBTs in Washington.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Nicholas", with a stylized flourish at the end.

Steve Nicholas, Director
Seattle Office of Sustainability & Environment